

TAX CONVENTION WITH TUNISIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT WASHINGTON ON JUNE 17, 1985



MARCH 13, 1986.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

71-118 O

WASHINGTON : 1986

5385-1

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 13, 1986.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (referred to hereafter as "the Convention"), together with a related exchange of notes, signed at Washington on June 17, 1985. I also transmit the report of the Department of State on the Convention.

The Convention is the first income tax treaty to be negotiated between the United States and Tunisia. It is based on model income tax treaties developed by the Department of the Treasury, the Organization for Economic Cooperation and Development, and the United Nations. It deviates in some respects from the models to reflect Tunisia's status as a developing country and an importer of capital.

The Convention provides rules with respect to the taxation of various types of income, such as business profits, personal service income, and investment income. It also contains standard provisions guaranteeing a foreign tax credit, ensuring nondiscriminatory tax treatment, and providing for exchanges of information and administrative cooperation to avoid double taxation and prevent tax evasion.

I recommend that the Senate give early and favorable consideration to the Convention, together with the related exchange of notes, and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 3, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related exchange of notes, signed at Washington on June 17, 1985.

The Convention is the first income tax treaty to be negotiated between the United States and Tunisia and is based on the model draft income tax conventions prepared by the United States, the Organization for Economic Cooperation and Development (OECD), and the United Nations. The Convention differs from the models in some respects to reflect Tunisia's status as a developing country and an importer of capital.

The Convention follows the general rule that business profits derived by a resident of one of the Contracting States may be taxed by the other Contracting State only to the extent attributable to a "permanent establishment" in that other State, and then on a net basis after deductions for expenses incurred in earning the income. In recognition of Tunisia's status as a developing country, a construction or installation site or a drilling rig constitutes a permanent establishment after 183 days in a 365-day period, rather than after the 12-month period typically found in United States tax treaties with industrial countries.

The Convention provides for a maximum rate of withholding tax at source of 20 percent on dividends from portfolio investments and 14 percent on dividends from direct investment (defined for this purpose as dividends paid to a company owning at least 25 percent of the share capital of the paying company). The 14 percent rate is high relative to most United States tax treaties with other industrial countries, but is not excessive compared with the rate allowed in some other United States treaties with developing countries. Moreover, the applicable rate of Tunisian corporate tax is generally low enough that the combined Tunisian corporate and withholding taxes on profits distributed as direct investment dividends may be credited against the United States corporate tax of 46 percent. This result prevents the transfer of revenues from the Tunisian Treasury to the Treasury of the United States while removing the tax penalty to United States companies of investing in Tunisian

subsidiaries. In the absence of the Convention, the Tunisian rate of withholding tax on dividends is 25 percent.

In addition, the Convention provides for a maximum rate of withholding tax at source of 15 percent on interest. Special exemptions apply to interest derived by the government or a government instrumentality of either country, by a financial institution on long-term loans (7 years or longer), or on loans to the Tunisian Government by a United States resident.

The Convention also provides a maximum rate of tax at source of 15 percent on royalties. The term royalties is defined broadly to include payments for technical studies, payments for technical assistance performed in the other country, and income from the leasing of certain equipment. This provision does not affect the leasing of ships and aircraft used in international traffic and the occasional leasing of containers and related equipment by international shipping and airline companies. Income from such leasing is taxable only in the country of residence of the leasing company. Leasing which falls within the definition of royalties is subject to the gross withholding tax to the extent not attributable to a permanent establishment in the source country. Where the leasing is done through a local office or other fixed place of business in the source country, the income is taxable on a net basis.

The rules governing the taxation of income from personal services are similar to those in other United States tax treaties. In general, individuals who are residents of one country and are working in the other country will be subject to tax in that other country if they stay longer than the stated period, earn more than the specified amount, or are employed and paid by a local company. A special exemption is available to visiting students and trainees.

The Convention also contains standard provisions guaranteeing a foreign tax credit, ensuring nondiscriminatory tax treatment, and providing for exchanges of information and administrative cooperation to avoid double taxation and prevent tax evasion.

In the accompanying exchange of notes, Tunisia expresses concern that the Convention does not include a tax incentive to investment in Tunisia, such as a "tax sparing credit", i.e., a foreign tax credit for the full amount of the tax specified in the Tunisian tax code even if, in fact, that tax has been reduced or waived as an incentive to encourage foreign investment. The United States, which has an established policy against "tax sparing" credits in such treaties, agrees to reopen discussions on that issue if the United States position should change in the future.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Tunisian Republic, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Convention shall apply in general to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State.

2. The existing taxes to which this Convention shall apply are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code but excluding the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and social security taxes.

(b) In the case of Tunisia:

- the business profits tax;
- the tax on capital gains on real property;
- the tax on profits of non-commercial professions;
- the tax on wages, salaries and pensions;
- the agricultural tax;
- the tax on dividends;
- the tax on income from credits, deposits, guarantees and current accounts;
- the personal income tax;
- the extraordinary tax for national solidarity.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any major changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term "person" includes an individual, a trust, an estate, a company, and any other body of persons;

(b) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other contracting State;

(d) The term "competent authority" means:

(1) In the case of the United States, the Secretary of the Treasury or his delegate,

(2) In the case of Tunisia, the Minister of Finance or his representative.

(e) The term "United States" means the United States of America; and when used in a geographical sense, the term "United States" means the states thereof and the District of Columbia and the area adjacent to the territorial sea of the United States over which, in accordance with international law, the United States may exercise rights with respect to the natural resources of the seabed and marine subsoil.

(f) The term "Tunisia" means the Republic of Tunisia; and when used in a geographical sense, means the territory of the Republic of Tunisia and the area adjacent to the territorial sea of Tunisia over which, in accordance with international law, Tunisia may exercise rights with respect to the natural resources of the seabed and marine subsoil.

(g) The term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires (and subject if necessary to the provisions of Article 25 (Mutual Agreement Procedure)), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

FISCAL DOMICILE

1. For purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his tax status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he has a permanent home available to him in neither State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, or supervisory activities connected therewith, constitutes a permanent establishment but only if such site, project or activity continues for a period or periods aggregating more than 183 days in any 365-day period (including the period of any supervisory activity connected therewith).

4. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

8. An insurance enterprise of one Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it receives premiums in that State or insures risks incurred in that State through an employee or other representative other than a broker or agent described in paragraph 6.

ARTICLE 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and

other natural resources; ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in that other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment and with any other associated enterprises.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than toward reimbursement of actual expense) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. The participation of a partner in the business profits of a partnership ("societe de fait" or "association en participation") shall be taxable in the Contracting State where the partnership has a permanent establishment.

8. Nothing in this Article shall affect the application of any law of a Contracting State or its administrative practices relating to the determination of the tax liability of a person in cases where the information available to the competent authority of the Contracting State is insufficient to determine the profits to be attributed to a permanent establishment situated in that Contracting State, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise from the operation in international traffic of ships or aircraft shall be taxable:

(a) in Tunisia only if the place of effective management of the enterprise is in Tunisia or aboard a ship of which the home harbor is in Tunisia or the operator is a resident of Tunisia; and

(b) in the United States only if the enterprise is created under the law of the United States or a State thereof.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are occasional and accessory to other profits described in paragraph 1, and profits from the use, maintenance, or rental of containers and related equipment used in international traffic if such rental profits are occasional and accessory to other profits described in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 14 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns directly at least 25 percent of the share capital of the company paying the dividends;

(b) 20 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect to the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating in prof-

its, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as:

- (a) such dividends are paid to a resident of that other State,
- (b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or
- (c) that other State is the United States and such dividends are paid out of profits attributable to one or more permanent establishments which such company had in that other State, provided that the gross income attributed to such permanent establishments constituted at least 50 percent of such company's gross income from all sources.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph 2.

6. Notwithstanding any other provision of this Convention, Tunisia may impose on the income of a company resident in the United States and attributable to a permanent establishment in Tunisia, an additional tax to the tax which would apply to the income of a company resident in Tunisia, but such additional tax may not exceed 14 percent of the profits attributable to that permanent establishment after deducting all taxes imposed by Tunisia on such profits other than the additional tax referred to in this paragraph.

7. Dividends, as defined in paragraph 3, shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State or if paragraph 5(c) applies.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the interest.

3. Notwithstanding paragraphs 1 and 2, interest shall be exempt from tax in the Contracting State in which it arises if the interest is:

(a) beneficially derived by a Contracting State, a political subdivision or local authority thereof or an instrumentality of such State, subdivision or authority, not subject to tax by that State on its income (such as the Export-Import Bank of the United States or the Overseas Private Investment Corporation of the United States);

(b) beneficially derived by a resident of a Contracting State that is a bank or similar financial institution with respect to an obligation having a maturity of at least 7 years; or

(c) paid by the Government of the Tunisian Republic to a resident of the United States with respect to loans made to the Government of the Tunisian Republic or a political subdivision or local authority thereof.

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner is a resident of the other State, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph film or films or tapes used for radio or television broadcasting);

(b) payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula, or process or for the use of, or the right to use, industrial, commercial, or scientific equipment (other than ships, aircraft, or containers used in international traffic) or for information concerning industrial, commercial, or scientific experience;

(c) payments of any kind received by a resident of a Contracting State as remuneration for technical or economic studies, wherever prepared, or as remuneration for technical assistance performed in the other Contracting State; and

(d) gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

6. Royalties, as defined in paragraph 2, shall be deemed to arise in a Contracting State to the extent that such royalties are paid with respect to the use of, or the right to use, rights or property within that State or, in the case of studies referred to in paragraph

3(c), to the extent that the payment is made by that Contracting State or a resident thereof.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Real Property) and situated in the other Contracting State may be taxed in that other State.

2. For purposes of this Article, immovable property situated in the other Contracting State means property referred to in Article 6 (Immovable (Real) Property) and, in the case of the United States, includes a United States real property interest as defined in section 897 of the Internal Revenue Code and the regulations thereunder.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable in Tunisia only if the place of effective management of the enterprise is in Tunisia, and in the United States only if the enterprise is created under the laws of the United States or a state thereof.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and:

(a) the individual is present in that other State for a period or periods aggregating more than 183 days in the taxable year concerned,

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in such other State, or

(c) the gross income derived in the taxable year from residents of that other State for the performance of such services in the other Contracting State exceeds seven thousand five hundred (7,500) United States dollars or its equivalent in Tunisian dinars.

2. Performance of personal services in an independent capacity includes, especially, independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Etc.) and 19 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned,

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of employment as a member of the regular complement of a ship or aircraft operated by an enterprise in international traffic shall be taxable:

(a) in Tunisia only if the place of effective management of the enterprise is in Tunisia;

(b) in the United States only if the enterprise is created under the laws of the United States or a state thereof.

ARTICLE 16

DIRECTORS' FEES

Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), a director's fee derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State (but not including fixed or contingent payments derived in his capacity as an officer or employee), which cannot be taken as a deduction by the corporation but is treated in that other State as a distribution of profits, may be taxed in that other State.

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or her or borne on his or her behalf, from such activities do not exceed seven thousand five hundred United States dollars (\$7,500) or its equivalent in Tunisian dinars for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

ARTICLE 18

PENSIONS, ETC.

1. Subject to the provisions of Article 19 (Governmental Functions):

(a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State;

(b) social security benefits paid by a Contracting State to a resident of the other Contracting State may also be taxed in the first-mentioned State.

2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under a contractual obligation.

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 19

GOVERNMENTAL FUNCTIONS

1. Remuneration, other than a pension, paid by or from public funds of one of the Contracting States, or any of its political subdivisions or local authorities, to a citizen of that Contracting State for labor or personal services performed in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

2. (a) Any pension beneficially derived by a resident of one Contracting State and paid by, or from public funds of, the other Contracting State or any of its political subdivisions or local authorities, in respect of labor or personal services performed in the discharge of governmental functions shall be exempt from tax by that other Contracting State.

(b) However, such pension may also be taxed by the other Contracting State if paid to a citizen of that other Contracting State.

3. The provisions of Article 14 (Independent Personal Services), 15 (Dependent Personal Services), or 17 (Artistes and Athletes), as the case may be, shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 20

STUDENTS AND TRAINEES

A student, apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his or her full-time education or training shall not be taxed in that State for a period not exceeding five taxable years from the date of his arrival in that State on:

(a) payments arising outside that State for the purpose of his or her full-time education or training;

(b) a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization for the purposes of studying or doing research; and

(c) income from personal services performed in that other Contracting State in an amount not in excess of \$4,000 U.S. dollars or its equivalent in Tunisian dinars for any taxable year.

ARTICLE 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6 (Income From Immovable (Real) Property), if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) as the case may be, shall apply.

ARTICLE 22

GENERAL RULES

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws or one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by any other agreement between the Contracting States.

2. Notwithstanding any provisions of this Convention except paragraph 3, a Contracting State may tax a citizen or resident of that Contracting State, as defined in Article 4 (Fiscal Domicile), in accordance with its domestic laws as if this Convention had not come into effect. For this purpose the term "citizen" includes a former citizen whose loss of citizenship was motivated by the avoidance of tax, the reason for the loss of citizenship having been either acknowledged by the taxpayer or determined by a court decision.

3. The provisions of paragraph 2 shall not affect:

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraph 1 of this Article, and Articles 23 (Relief from Double Taxation), 24 (Nondiscrimination) and 25 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 19 (Governmental Functions) and 20 (Students and Trainees) upon individuals who are neither citizens of, nor have immigrant status, in that Contracting State.

ARTICLE 23

RELIEF FROM DOUBLE TAXATION

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amend-

ed from time to time without changing the general principle hereof); the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the income tax paid to Tunisia; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Tunisia from which it receives dividends, the United States shall allow credit for the income tax paid to Tunisia by or on behalf of the distributing company with respect to the profits out of which such dividends are paid. However, such credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Tunisia amounts paid as tax under the taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of Tunisia, when a resident of Tunisia derives income which, in accordance with the provisions of this Convention may be taxed in the United States, Tunisia shall allow as a credit against the tax on the income of that resident the income tax paid to the United States. However, such credit shall not exceed that part of the income tax, computed before the credit, which is attributable to the income which may be taxed in the United States.

3. For purposes of the preceding paragraphs of this Article, and except as otherwise provided in this Convention, income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention other than solely by reason of citizenship shall be deemed to arise in that other Contracting State.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of the Contracting State who are residents in the other Contracting State shall not be subjected in that other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(a) all individuals possessing the nationality of a Contracting State; and

(b) all legal persons, partnerships, and associations deriving their status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties and other

disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to all taxes imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23 (Relief From Double Taxation), to that of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may through consultation deny the benefits of Articles 10, 11 and 12 to a company of a third country if the company becomes a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an

agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through representatives of the competent authorities of the Contracting States.

ARTICLE 26

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The competent authorities shall also notify each other of official published information concerning the application of the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State.

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

ENTRY INTO FORCE

1. This Convention shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect of income tax withheld at the source, to amounts paid or credited on or after the earlier of the first day of January following the exchange of instruments of ratification or the first day of the fourth month following the exchange of instruments of ratification; and

(b) in respect of other taxes on income, to taxable periods ending on or after the thirty-first day of December of the year during which the exchange of instruments of ratification are exchanged.

ARTICLE 29

TERMINATION

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 month period;

(b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 month period.

DONE at Washington in duplicate, in the English and French languages, the two texts having equal authenticity, this 17th day of June, 1985.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

George P. Shultz

[George P. Shultz]

FOR THE GOVERNMENT OF THE
TUNISIAN REPUBLIC:

Beji Caïd Essebsi

[Beji Caïd Essebsi]

JUNE 17, 1985.

His Excellency BEJI CAÏD FSSEBSI,
Minister of Foreign Affairs of Tunisia.

EXCELLENCY: I have the honor to refer to the Convention Between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to

Taxes on Income and to confirm, on behalf of the Government of the United States of America the following understanding reached between the two Governments.

During the course of negotiations leading to the conclusion of the Convention signed today, representatives of the Tunisian Republic emphasized the importance of increased capital flows to Tunisia and asked that a special tax incentive to U.S. investment in Tunisia (e.g. a "tax sparing" credit) be included in the Convention. The United States delegation, while understanding the Tunisian position, is not prepared to agree to such a provision. I wish to assure you, however, that, should the United States position change and we agree to include such a provision in an income tax treaty with another country, we agree to reopen discussions with the Tunisian Republic with a view to extending the same benefit to investment in Tunisia.

Accept, Excellency, the assurances of my highest consideration.

GEORGE P. SHULTZ,
*Secretary of State of the
United States of America.*

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
June 17, 1985.

(Translation)

EXCELLENCY: I have the honor to refer to your letter of today's date, which reads as follows:

[The French translation of the U.S. letter regarding the bilateral income tax treaty with Tunisia agrees with the original English text in all substantive respects.]

On behalf of the Government of the Tunisian Republic, I have the honor to confirm the understanding referred to in the letter sent to us by Your Excellency.

Accept, Excellency, the assurances of my highest consideration.

[BEJI CAID ESSEBSI]

O—

INVESTMENT TREATY WITH PANAMA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF PANAMA CONCERNING THE TREATMENT
AND PROTECTION OF INVESTMENTS, WITH AGREED MINUTES,
SIGNED AT WASHINGTON, OCTOBER 27, 1982



MARCH 25, 1986.—Treaty was read the first time, and together with the
accompanying papers, referred to the Committee on Foreign Relations
and ordered to be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1986

5385-2

LETTER OF TRANSMITTAL

THE WHITE HOUSE, March 25, 1986.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Panama concerning the Treatment and Protection of Investments, with Agreed Minutes, signed October 27, 1982, at Washington. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

This treaty is among the first six treaties to be transmitted to the Senate under the Bilateral Investment Treaty (BIT) program that I initiated in 1981. The BIT program is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Panama and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with agreed minutes, at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 20, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States and the Republic of Panama concerning the Treatment and Protection of Investments, with Agreed Minutes, signed at Washington, October 27, 1982. This treaty is among the first six treaties to be negotiated under the bilateral investment treaty (BIT) program which you initiated in 1981. Development of the BIT program and the negotiation of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with the active participation of the Department of Commerce and the U.S. Treasury, in conjunction with other interested U.S. Government agencies. I recommend that this treaty, as well as the others concluded with the Kingdom of Morocco, the Republic of Haiti, the Republic of Senegal, Republic of Turkey, and the Republic of Zaire, be transmitted to the Senate for its advice and consent to ratification.

In 1981 you initiated the global bilateral investment treaty (BIT) program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in each of the treaty Parties. The negotiations of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The six treaties which have been signed as well as others under negotiation are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is our policy to advise potential treaty partners that conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601 (a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendships, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to provide investor-host country arbitration in instances where an investment dispute arises.

Our BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. Our treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

THE U.S.-PANAMANIAN TREATY

The treaty with Panama was negotiated by an inter-agency team led by officials from the Office of the United States Trade Representative and the Department of State. The treaty satisfies all four main BIT objectives:

Foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country and no less favorably than investors of third countries, whichever is the most favorable treatment, ("national" and "most-favored-nation" treatment) subject to certain specified exceptions;

International law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;

VII

Free transfers shall be afforded to funds associated with an investment into and out of the host country; and

Procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Panama's acceptance of international law as the governing law, mark an important achievement for the BIT program and our investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Panama.

Some provisions of the treaty with Panama differ in minor respects from the U.S. model text. In general, however, the treaty closely follows the language contained in the U.S. negotiating model, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. Protected "companies of a Party" are those incorporated or otherwise organized under the laws of a Party in which nationals of that Party have a substantial interest.

The model BIT accords the better of national or most-favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Any future exceptions to these standards which a Party adopts are not to affect existing investments. The BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The U.S. model also provides that nationals and companies of either Party shall in the territory of the other Party be permitted to employ professional, technical and managerial personnel of their choice regardless of nationality.

The model BIT also confers protection from unlawful interference of property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective com-

pensation; and in accordance with due process of law and the general standards of treatment discussed above. The BIT's definition of "expropriation" is broad and flexible; essentially "any measure" regardless of form, which has the *effect* of depriving an investor of his management, control or economic value in a project can constitute expropriation requiring compensation equal to the "fair market value." Such compensation, which "shall not reflect any reduction in such fair market value due to . . . the expropriatory action," must be "without delay," "effectively realizable," "freely transferable" and "bear current interest from the date of the expropriation at a rate equal to current international rates." The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, contract payments, proceeds from sale, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion. In particular, the model BIT provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID"). Exhaustion of local remedies is not required. In a separate provision, the BIT Parties also agree to grant nationals and companies of the other Party access to their domestic courts in order to assert claims and enforce rights with respect to investments.

The model BIT provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax

matters in tax treaties, the BIT generally excludes such matters. It also specifically limits the arbitration provisions to only certain taxation matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty, the U.S. Government retains, of course, some flexibility to adopt modifications as necessary and in light of experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained.

Some provisions of the treaty with Panama differ in minor respects from the U.S. model text, although none of the changes represent substantive departures from U.S. objectives. The more significant modifications are as follows:

(1) General treatment language—Article II of the Panama text provides for the standard general treatment contained in the U.S. model text, i.e., the better of national or MFN treatment. However, while the model BIT stipulates that conditions of "competitive equality" shall be maintained between private investments of one Party and host-country private and public-sector investments, the Panama text provides for "fair and equitable treatment" in such situations. (Article II, paragraph 3.)

(2) Performance requirements—Although Article II, paragraph 4, of the Panama text, like the model text, restricts the imposition of performance requirements, Panama noted its practice of granting benefits to investors under its "incentive laws" when investments are "established." (Agreed Minutes, paragraph 2.)

(3) Employment laws—The Panama text, like the U.S. model, states that nationals and companies of either Party may employ in the territory of the other Party top managerial personnel of their choice regardless of nationality. The hiring of other professional, technical and managerial personnel is, however, made "subject to the employment laws of each Party." (Article III, paragraph 2.) The Parties agree to apply such laws "flexibly, taking into account, *inter alia*, the nature of the investment, the requirements of the positions in question, and the availability of qualified nationals." (Agreed Minutes, paragraph 3.)

(4) Compensation for Requisitioning and Destruction of Property—The first model BIT would have obligated a Party which requisitions property or destroys property in non-combat situations to pay compensation. The Panama text omits this provision. This omission is not significant since these principles are already established under international law and the clause was omitted in its entirety from the revised model BIT.

(5) Requirement to make public all investment laws—Unlike the U.S. model text, the Panama text does not include any obligation to make public all laws, regulations, administrative practices and procedures affecting investments. Such a clause was deemed unnecessary since Panamanian laws have always been readily available.

(6) Compensation upon expropriation and transfers—The Panama text essentially adopts the U.S. model's definition of what constitutes a lawful expropriation but its elaboration of "adequate compensation," uses the term "full value" and not "fair market value," as used in the model. (Article IV, paragraph 1.) Given the other assurances contained in the Panama BIT, this difference is not substantive. The Panama text also specifically acknowledges that the estimate of the full value of an investment "can be made using several methods of calculation." (Agreed Minutes, paragraph 4.) This merely emphasizes an issue which is implicit in the U.S. model text. Concerning the payment of interest, the text does not specify that such payment be from the date of expropriation. Further, since Panama uses U.S. currency, there is no provision requiring that payments be freely transferable "at the market rate of exchange on the date of the expropriation." For the same reason, Article VI of the Panama text, on transfers, is much less specific than the U.S. model. The text asserts only that current and capital transactions shall remain "unrestricted" and "free".

(7) Dispute settlement—The Panama text refers to the possibility of recourse to the Inter-American Commercial Arbitration Commission as well as to the Additional Facility of ICSID. (Article VII, paragraph 2.) There is no equivalent to the U.S. model clause stating that where there is a choice between binding arbitration or conciliation between a host government and a national or company of the other Party, the opinion of the national or company prevails.

(8) General scope of treaty—The Panama text provides that the treaty will not apply to any existing dispute which predates the entry into force of the treaty, unless the dispute comes within the terms of Article IV ("expropriation") and does not predate ratification by more than three years. (Article XIII, paragraph 2.) (The United States is presently seeking clarification from the Government of Panama that for purposes of Article XIII, paragraph 2, "ratification" means the exchange of ratifications which triggers entry into force.) Like the U.S. model, the Panama text grants national and companies of either Party access to the other Party's domestic courts in order to bring claims and enforce rights related to investments. The Panama text confers this right by including it among a list of specified activities, including the making, performance and enforcement of contracts, which the Parties agree are activities "associated" with an investment and therefore entitled to treaty protection. (Article II, paragraph 1.) This listing is included as part of the "Agreed Minutes" between the Parties. (Agreed Minutes, paragraph 1 (a-j).) These Minutes are meant to clarify the Parties' intent. They are integral parts of the Treaty. The fact that provisions are set apart in Agreed Minutes, rather than in the main text of the treaty, is of no legal significance.

(9) Exemptions from coverage—In the Annex to the Treaty, Panama exempts from the obligation to grant national treatment and the right of establishment communications, representation of

foreign firms, distribution and sale of imported products, retail trade, insurance, state companies, private utility companies, energy production, practice of liberal professions, custom house brokers, banking, natural resources exploitation (including fisheries and hydroelectric power), and ownership of certain lands. Except for the ownership of real estate, investors must receive at least MFN treatment in all exempted sectors and matters.

(10) Clarification of public order exception—Because of political sensitivities in Panama, the Panamanians insisted on a separate exchange of notes (information copy attached) clarifying the standard provision in the BIT which exempts measures taken for public order. In these notes the Parties agree that this exception is not meant to authorize either Party to take such measures in the territory of the other.

(11) Applicability to political subdivisions—Article XII of the Panama text contains a clause from the model text providing that the substantive treaty obligations accepted by each Party equally apply to political subdivisions of the respective Parties. (This superfluous clause has been deleted from the later, simplified model BIT). The Agreed Minutes attempt to clarify this clause by providing that the treaty applies to states, territories, and possessions of the United States "wherever relevant." (Agreed Minutes, paragraph 6.) This clause was included to avoid the interpretation that the treaty binds U.S. states to procedural treaty obligations such as the duty to arbitrate or to engage in negotiations. Thus, in cases where a U.S. state violates the substantive obligations of the treaty, the U.S. Government, and not the respective state, is the proper Party in any subsequent arbitration, although the state in question will be bound by the result.

Submission of this treaty, together with the other five noted above, marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting these treaties and favor their approval by the Senate at an early date.

Respectfully submitted.

GEORGE P. SHULTZ.

Enclosures: As stated.

PANAMA, July 12, 1985.

No. 054.

His Excellency JORGE ABADIA ARIAS,
Minister of Foreign Relations,
Panama, Republic of Panama.

EXCELLENCY: I have the honor to acknowledge receipt of your Excellency's Note DGPE-EUC-No. 172/12-7 dated July 1, 1985 concerning the Treaty between the United States of America and the Republic of Panama regarding the Treatment and Protection of Investment, signed on the 27th of October, 1982 in Washington, D.C. The substance of that Note reads as follows:

I have the honor to confirm the understanding that was arrived at during the negotiation of the Treaty between the Republic of Panama and the United States of America

regarding the Treaty and Protection of Investment, signed on the 27th of October, 1982 in Washington, D.C.

Paragraph 1 of Article X refers only to those domestic measures taken by either Party the object of which is to maintain public order, fulfill its obligations with respect to the maintenance or restoration of international peace and security or protect its own essential security interests.

It is understood that nothing in the provisions of this paragraph of Article X authorizes or has the intention of authorizing either Party to take such measures in the territory of the other.

If the Government of the United States of America is in agreement with the content of this Note, on the understanding set forth herein, I have the honor to propose that said Note, together with Your Excellency's affirmative reply, constitute an agreement between our two Governments, concerning this issue, which will enter in effect from July 1, 1985.

I take this opportunity to renew to Your Excellency, the assurances of my highest and most distinguished consideration.

In reply, I have the honor, on behalf of the Government of the United States of America, to confirm the understanding set forth in Your Excellency's Note, and we agree that your note and this reply shall constitute an agreement between our two governments which shall enter into force on the date of this reply with effect from July 1, 1985.

Accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

EVERETT E. BRIGGS.

DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES

[TRANSLATION]—LS No. 117911, WD/BP, Spanish]

REPUBLIC OF PANAMA,
MINISTRY OF FOREIGN RELATIONS,
Panama, Panama.

DGPE-EUC-No. 172/12-7, July 1, 1985.

His Excellency EVERETT ELLIS BRIGGS,
Ambassador of the United States of America,
Panama, Republic of Panama.

MR. AMBASSADOR: [The English translation of this note that is quoted in American Embassy, Panama, note No. 054 of July 12, 1985, agrees in all substantive respects with the original Spanish text.]

JORGE ABADIA ARIAS,
Minister of Foreign Relations.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA CONCERNING THE TREATMENT AND PROTECTION OF INVESTMENTS

The United States of America and the Republic of Panama,
Desiring to promote economic cooperation between them by creating favorable conditions for investment by nationals and companies of one Party in the territory of the other Party,

Recognizing that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty:

(a) "national of a Party" means a natural person who is a national or citizen of that Party under its laws;

(b) "company" means any kind of juridical entity, including any corporation, company, association, or other organization, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is organized for pecuniary gain, privately or publicly owned, or organized with limited or unlimited liability;

(c) "company of a Party" means a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof in which:

(i) natural persons who are nationals of such Party, or

(ii) such Party or a political subdivision thereof or their agencies or instrumentalities

have a substantial interest as determined by such Party.

The juridical status of a company of a Party shall be recognized by the other Party and its political subdivisions.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, except with respect to recognition of juridical status and access to courts, if nationals of any third country own or control such company; provided that whenever one Party concludes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall consult with the other Party to seek a mutually satisfactory resolution to this matter;

(d) "investment" means every kind of investment, owned or controlled directly or indirectly, including equity, debt, and service and investment contracts; and includes:

- (i) tangible and intangible property, including rights, such as mortgages, liens and pledges;
- (ii) a company or shares of stock or other interests in a company or interests in the assets thereof;
- (iii) a claim to money or a claim to performance having economic value and associated with an investment;
- (iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how; and goodwill;
- (v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;
- (vi) any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products; and
- (vii) returns which are reinvested.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment;

(e) "own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located; and

(f) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; and return in kind.

ARTICLE II

1. Each Party shall maintain favorable conditions for investment in its territory by nationals and companies of the other Party. Each Party shall permit and treat such investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable, subject to the right of each Party to make or to maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty, or resulting from laws and regulations in effect on the date that this Treaty enters into force. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to maintain the number of such exceptions to a minimum. Any exception, other than with respect to ownership of real property, shall be on a basis according treatment no less favorable than that accorded in like situations to investment, or associated activities, of nationals or companies of any third country. Moreover, any future exception by either Party shall not apply to investment of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

2. Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The

treatment, protection and security of investment shall be in accordance with applicable national laws and international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.

3. Each Party agrees to provide fair and equitable treatment and, in particular, the treatment provided for in paragraph 1 of this Article, to privately owned or controlled investment of nationals or companies of the other Party, where such investment is in competition, within the territory of the first Party, with investment owned or controlled by the first Party or its agencies or instrumentalities. In no case shall such treatment differ from that provided to any privately owned or controlled investment of nationals or companies of the first Party which is also in competition with investment owned or controlled by the Party or its agencies or instrumentalities.

4. Neither Party shall impose performance requirements as a condition for the establishment of investment owned by nationals or companies of the other Party, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

ARTICLE III

1. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

2. Nationals and companies of either Party, and companies which they own or control, shall be permitted to engage, within the territory of the other Party, top managerial personnel of their choice, regardless of nationality. Moreover, subject to the employment laws of each Party, nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional, technical and managerial personnel of their choice, regardless of nationality, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of their investment.

ARTICLE IV

1. Investment of a national or a company of either Party shall not be expropriated, nationalized, or subject to any other direct or indirect measure having an effect equivalent to expropriation or nationalization ("expropriation") in the territory of the other Party, except for a public or social purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process and the general princi-

ples of treatment laid down in Article II(2). Such compensation shall amount to the full value of the expropriated investment immediately before the expropriatory action became known; include interest at a commercially reasonable rate; be paid without delay; be effectively realizable; and be freely transferable.

2. Consistent with Article I(d), if either Party expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

ARTICLE V

In the event that a national or a company of one of the Parties suffers a loss in its investment in the territory of the other Party because of war or other type of armed conflict, insurrection, state of national emergency, riot or terrorism, it shall not be treated less favorably, with regard to restitution, adjustments, indemnifications or other payments for such loss, in accordance with the laws of such other Party, than nationals or companies of such other Party, or nationals or companies of any third country, whichever are treated most favorably.

ARTICLE VI

Each Party agrees, with respect to investments made within its territory by nationals or companies of the other Party, that current and capital transactions shall remain unrestricted and that payments and other transfers with respect to such transactions shall continue to be free.

ARTICLE VII

1. For purposes of this Article, an investment dispute is defined as a dispute involving: (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by its foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of the first Party, the parties to the dispute shall initially seek to resolve it by consultation and negotiation. The Parties may, upon the initiative of either of them and as a part of their consultation and negotiation, agree to rely upon non-binding, third party procedures, such as the fact-finding facility available under the Rules of the Additional Facility ("Additional Facility") of the International Centre for the Settlement of Investment Disputes ("Centre"). If the dispute cannot be resolved through consultation and negotiation, then the dispute shall be submitted for settlement in accordance with the

applicable dispute settlement procedures upon which they have previously agreed. Such procedures may provide for recourse to international arbitration using a forum such as the Inter-American Commercial Arbitration Commission. With respect to expropriation by either Party, any dispute settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable, in accordance with, *inter alia*, the terms of the investment agreement, relevant provisions of the domestic laws of such Party, and Treaties and other international agreements regarding enforcement of arbitral awards to which such Party has adhered.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the Additional Facility for settlement, either by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Additional Facility, provided the dispute has not, for any reason, been submitted for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute, and the national or company concerned has not brought the dispute before the courts of justice, administrative tribunals or agencies of competent jurisdiction of either Party.

(b) Each Party hereby consents to the submission of an investment dispute to the Additional Facility for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Regulations and Rules of the Additional Facility.

(d) Each Party shall provide for the enforcement within its territory of Additional Facility arbitral awards.

4. In any proceeding, judicial, arbitral or otherwise, concerning an investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counter claim, right of set off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whatsoever, whether public or private, including such other Party and its political subdivisions, agencies and instrumentalities.

5. For the purpose of any proceedings before the Additional Facility in accordance with this Article, any company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was owned or controlled by nationals or companies of the other Party, shall be treated as a national or company of such other Party.

6. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE VIII

1. Any dispute between the Parties concerning the interpretation or application of this Treaty should, if possible, be resolved through consultations between representatives of the two Parties, and if this should fail, through other diplomatic channels.

2. If the dispute between the Parties cannot be resolved through the aforesaid means, and unless there is agreement between the Parties to submit the dispute to the International Court of Justice, both Parties hereby agree to submit it upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

3. The Tribunal shall be established for each case as follows. Within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator. The two arbitrators so appointed shall select a third arbitrator as Chairman, who is a national of a third State. The Chairman shall be appointed within two months of the date of appointment of the other arbitrators.

4. If the required appointments have not been made within the time specified in paragraph 3 of this Article, either of the Parties may, in the absence of any other agreement, request that the President of the International Court of Justice make the required appointments. If the President is a national of one of the Parties or if he cannot otherwise perform said duties, the Vice President shall be asked to make the required appointments. If the Vice President is a national of one of the Parties or if he cannot otherwise perform said duties, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties shall be asked to make the required appointments.

5. In the event that an arbitrator resigns or is for any reason unable to perform his duties, a replacement shall be appointed within thirty days, utilizing the same method by which the arbitrator being replaced was appointed. If the replacement is not appointed within the time limit specified above, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either of the Parties or is unable to act for any reason, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties, to make the appointment.

6. Unless otherwise agreed to by the Parties to the dispute, all submissions shall be made and all hearings shall be completed within six months of the date of the selection of the third arbitrator, and the Tribunal shall render its decision within two months of the later of the date of the final submissions or the date of the closing of the hearings.

7. The Tribunal shall decide in all matters by majority vote. Any such decision shall be binding on both Parties. Each Party shall bear the expenses of its own representation in the arbitration proceedings. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by

the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties. Such a decision shall be binding.

8. The Parties may agree to specific arbitral procedures. In the absence of such agreement, the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 ("Model Rules") and commended to Member States by the United Nations General Assembly in Resolution 1262 (XIII) shall govern. To the extent that procedural questions are not resolved by this Article or the Model Rules, they shall be resolved by the Tribunal.

9. This Article shall not be applicable to a dispute which has been submitted to the Additional Facility pursuant to Article VII (3). Recourse to the procedures set forth in this Article is not precluded, however, in the event an award rendered in such dispute is not honored by a Party; or an issue exists related to a dispute submitted to the Additional Facility but not argued or decided in that proceeding.

10. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export Import Bank of the United States, or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

1. This Treaty shall not supersede, prejudice, or otherwise derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments, or associated activities, of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

2. This Treaty shall not derogate from or terminate any other agreement entered into by the two Parties and in force as between the two Parties, on the date on which this Treaty enters into force.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of any and all measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace and security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory of nationals and companies of the other

Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, this Treaty shall apply to matters of taxation only with respect to the following:

- (a) expropriation, pursuant to Article IV;
 - (b) transfers, pursuant to Article VI; or
 - (c) the observance and enforcement of terms of an investment agreement or authorization, as referred to in Article VII
- (1) (a) or (b).

ARTICLE XII

This Treaty shall apply to political subdivisions of the Parties.

ARTICLE XIII

1. This Treaty shall be ratified by the Parties, and the instruments of ratification thereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty days after the date of exchange of ratifications.

It shall remain in force for a period of ten years, and shall continue in force unless terminated in accordance with Paragraph 3 of this Article. It shall apply to any investment existing at the time of its entry into force as well as to any investment made or acquired thereafter. However, this Treaty shall not apply to any dispute, claim or suit predating the date of ratification of this Treaty, unless such dispute comes within the terms of Article IV and does not predate ratification by more than three years.

3. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten-year period or at any time thereafter.

4. With respect to any investment existing at the time this Treaty enters into force, and to any investment made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty.

DONE at Washington this twenty-seventh day of October, 1982 in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

WILLIAM E. BROCK, Jr.

For the Government of the Republic of Panama:

AQUILINO E. BOYD.

ANNEX

Consistent with the provisions of Article II(1), each Party reserves the right to make or to maintain limited exceptions within each of the sectors of matters listed below:

The United States of America

Air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; use of lands and natural resources; custom house brokers; ownership of real estate; radio and television broadcasting; telephone and telegraph services; submarine cable services; satellite communications.

The Republic of Panama

Communications; representation of foreign firms; distribution and sale of imported products; retail trade; insurance; state companies; private utility companies; energy production; practice of liberal professions; custom house brokers; banking; rights to the exploitation of natural resources including fisheries and hydroelectric power production; and ownership of land located within 10 kilometers of the Panamanian border.

Each Party will notify the other of the details of the exceptions mentioned above.

AGREED MINUTES

The duly authorized Plenipotentiaries of the Parties have agreed upon the following provisions clarifying their intent in respect of certain Articles of the Treaty Concerning Treatment and Protection of Investment signed this date, which shall be considered integral parts of the Treaty:

1. With respect to Article II (1), the Parties agree that associated activities include:

(a) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(b) the employment of professional, technical and managerial personnel of their choice, regardless of nationality, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of an investment;

(c) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

(d) the making, performance and enforcement of contracts;

(e) the acquisition (whether by purchase, lease or otherwise), ownership and disposition (whether by sale, testament or otherwise), of personal property of all kinds, both tangible and intangible;

(f) the leasing of real property appropriate for the conduct of business;

(g) the acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights;

(h) the borrowing of funds from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets;

(i) the use of means of communication, transport and public utilities; and

(j) access to courts of justice, administrative tribunals and agencies, and the right of employment of persons by nationals or companies of the other Party, who otherwise qualify under applicable laws and regulations of the forum, regardless of nationality, for the purpose of asserting claims and enforcing rights, including those arising under the provisions of this Treaty, with respect to their investment and associated activities.

2. With respect to the treatment of investment as set forth in Article II, the Republic of Panama has incentive laws granting benefits to duly constituted companies which sign contracts with the government in which they agree to meet the requirements established therein.

3. In referring to employment laws in Article III(2), the Parties mean all laws regulating the terms and conditions of employment, including equal employment opportunity laws, preferential hiring laws, and anti-discrimination laws as well as laws relating to the training of local employees in order to qualify them for all professional, technical, and managerial positions. Each Party recognizes the right of the other Party to maintain such laws and also agrees to apply its own such laws on a non-discriminatory basis with respect to investment by nationals or companies of the other Party, consistent with the provisions of Article II(1). As for any laws requiring employment of its own nationals in certain positions or the employment of a certain percentage of its own nationals in positions in connection with investment made in its territory by nationals or companies of the other Party, each Party agrees to administer such laws flexibly, taking into account, *inter alia*, the nature of the investment, the requirements of the positions in question, and the availability of qualified nationals.

4. With respect to Article IV(1), both Parties understand that the estimate of the full value of expropriated investment can be made using several methods of calculation depending on the circumstances thereof.

5. The Parties agree that Article VI does not preclude: a) the United States from maintaining laws and regulations requiring reporting of currency transfers into or out of the United States; or b) either Party from maintaining laws and regulations imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors or litigants, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, non-discriminatory and good faith application of its laws.

6. In amplification of Article XII, with respect to the United States of America, references to a Party and to applicable laws and

regulations in this Treaty shall include wherever relevant the States, Territories and possessions of the United States, and their laws and regulations respectively.

National treatment accorded under the provisions of this Treaty to companies of Panama shall, in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories or possessions of the United States.

